IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION NO. 121 OF 2006.

Jose Jacinto Coutinho,
s/o. Edward Coutinho,
aged 55 years, Occ. Business,
R/o. 1st Daddio, Telaulim,
Navelim, Salcete, Goa. ..... Applicant

V e r s u s

STATE
(Through P.P.) ..... Respondent

Mr. Arun Bras De Sa, Advocate for the Applicant.

Ms. Coutinho, Public Prosecutor for the State/Respondent.

CORAM : N. A. BRITTO, J.

DATE : 16th February, 2006.

P.C.

Heard Shri Arun Bras De Sa, learned Advocate on behalf of the applicant and Ms. Coutinho, learned P.P. on behalf of the respondent.

2. The applicant has filed this application for bail, after bail was refused to him for the third time by Order dated 09.11.2005 of the learned

Sessions Judge, Margao.

3. Since then, a charge-sheet has already been filed on 01.02.2006, as informed by learned Public Prosecutor, under Sections 302, 323 and 201 of I.P.C. The bail application filed by the applicant was rejected because the applicant was in hospital since 08.11.2005, after he was arrested on 06.11.2005 and the Investigating Agency, had no opportunity to interrogate the accused, though offences of which the accused was charged were of serious nature.

4. There is no dispute that the wife of the deceased Raju Armugo, aged about 55 years, was working with the family of the accused and his mother. It appears that on 05.11.2005, information was received at the Margao Police Station that one suspected person was caught red handed near the house of the Ex-Sarpanch, Shri Pascoal, while taking iron rod from his residence and the said person while running away, had fallen down and had expired. Based on the said information, a case of U.D. was registered vide no. 81/05 and after the police reached the scene, the statement of the wife of the deceased, amongst others was recorded. As per the said statement, the wife of the deceased along with her daughter, were residing

in the house of Mrs. Pascoala Coutinho, which is also the house of the accused and the deceased usually slept in the verandah of the said house. She stated that on 06.11.2005, at about 00.30 hours, while the deceased was taking scrap items from the house of her said employer, the employer's son namely the accused, suddenly appeared and assaulted her husband/deceased with blows and slaps and when he fell on the ground, the accused kicked him on his chest and rib area and, thereafter, assaulted her on her hips as well and when the deceased collapsed in the compound of the house, the accused dragged him by holding his hands and brought him near the place where the body was seen lying near the telephone pole. She also stated that the accused had knowledge that her husband was not in a good health since long and that he used to quarrel with her husband on many previous occasions.

5. The autopsy report subsequently prepared by Dr. S. Banauliker, shows that there were two bruises on the right side of the chest and one bruise on the left side of the chest and two abrasions on the left part of the foot. Report also shows that there were multiple fractures for the right 1st to 6th ribs with displaced fragments. The cause of death has been given as due to injuries nos. 1 to 2 consequent to the blunt force impact which were

fresh and necessarily fatal at he time of death. Shri Bras De Sa, the learned Advocate on behalf of the applicant submits that there was enough provocation for the accused to have reacted in a manner he did, because he saw him taking away scrap belonging to their family. Shri Bras De Sa, has further submitted that from the facts stated, it is clearly seen that the accused did not use any weapon to assault the deceased and from there it could be gathered that the accused had no intention or knowledge that the simple assault would result in the death of the deceased.

6. Admittedly, the assault on the deceased was at past midnight when the accused made his sudden appearance at the house and found that the deceased was taking away scrap belonging to them and first assaulted him with fist blows and slaps and when the deceased fell on the ground, assaulted him on his chest with kicks. It is not necessary at this stage to find out whether the act of the accused had requisite intention or knowledge that assault in that manner would result in the death of the deceased since any observations in that regard at this stage, are bound to come in the way of the trial of the case. Suffice to observe, that the assault by the accused on the deceased was certainly not heinous as sought to be described by the Investigating Agency. No doubt, the said assault resulted

into the death of the deceased but, at the same time, it could not be said that the accused has committed an act for which, as a matter of rule, he would be punished either with death or to imprisonment for life. In other words, the offences alleged to have been committed by the accused are not of very grave nature, which call for imposition of the penalty of death or imprisonment for life and, being so, and considering the totality of the facts of the case, this would be a fit case to admit the accused to bail. The accused, therefore, shall be released on bail upon execution of a bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Sessions Judge, South Goa, Margao.

N. A. BRITTO, J.

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